No. 1 accused, the jury was taking the view that Krishnasamy was not a reliable witness and that therefore they were not prepared to accept his uncorroborated testimony in regard to accused No. 1.

However, the appellant was called on for his defence and the important difference in the evidence as against the 2nd accused was that there was another eye-witness. That eye-witness identified the appellant, and the appellant only, as being engaged in this attack. Consequently, the judge assumed, and again it would seem to be a reasonable assumption, that the jury up to that stage was taking the view that the evidence of Krishnasamy was, in regard to the case against the appellant, corroborated by the other eye-witness who was Mohd. bin Yeop Musa. Consequently the evidence of that witness becomes all important in the case against the appellant. Now that witness' evidence is for very different reasons, even more extraordinary than that of Krishnasamy. For he was a deaf-mute. It is clear from the record that the person who was ultimately engaged as an interpreter had difficulty in communicating with him and possibly, the record indicates, incorrectly interpreted his answers. For, at one stage he was interpreting the witness' evidence as saying that he (the witness) had been stabbed by the appellant, and later it was necessary for the witness to correct that. More important still, when it came to cross-examining this witness, the interpreter had to say that some of the questions which it was desired to put, just could not be put on to him.

Without going into his evidence in any greater detail, it is obvious that, in the case against the appellant, these circumstances were probably the most important aspect of the evidence against him. For the jury had apparently already arrived at the conclusion, with good reason in my opinion, for looking doubtfully at Krishnasamy's evidence. Consequently this witness' condition is one of those features which the court had in mind in *Attfield's* [1] case when they safeguarded themselves by saying that nothing that the court was saying then, was intended to put forward the suggestion that a judge is entitled to refrain from discussing the evidence, if the circumstances of the case and the conduct of the trial demand that he should. The circumstances concerning the deaf-mute demanded, as strongly as could be demanded, that the judge should warn the jury in the strongest terms to consider whether they should, or should not, accept his evidence. Strictly speaking, the question had to be left to the jury. It was a question of fact for them. But, speaking for myself, I feel that this is a case where the judge would be justified in putting to the jury that they could not safely accept his evidence.

So much for the question of the state of evidence and the directions which ought to have been given on it. But this is also a case to which the decision in *Imrie's* [2] case would apply. Here is a witness whose evidence could not be properly understood and to whom proper questions could not be put at all. Therefore it is a case where the jury might well have been directed that this evidence was to be excluded from their consideration altogether. From the record, it is difficult to see, when those features arose how the court could continue to take the view that this witness was a competent witness within the meaning of section 118 of the Evidence Ordinance.

It follows therefore, that, had this jury been properly directed, or had the court taken either of these two points with regard to the evidence of the deaf-mute, no jury could have arrived at the conclusion that Krishnasamy's evidence was satisfactorily corroborated in regard to what he said about this appellant. On either grounds, that is, on the lack of full direction on this aspect, or on the ground that this witness should not have been giving evidence or that his evidence should have been withdrawn from the jury, — on either of these grounds this appeal must succeed. The appeal is allowed, the conviction is quashed and the sentence set aside.

Appeal allowed.

AMALGAMATED UNION OF PUBLIC EMPLOYEES v. PERMANENT SECRETARY (HEALTH) & ANOR.

[O.C.J. (Winslow J.) July 21, 1965]

[Singapore — Originating Motion No. 9 of 1965]

Administrative Law — Remedies — Prohibition — Committee of inquiry appointed under Public Service (Disciplinary Proceedings) (Procedure) Rules, 1964 — Whether committee performing a judicial or quasi-judicial function — Whether holding of inquiry contravened Industrial Relations Ordinance, 1960, s. 77 — Legal rights of civil servants — Federal Constitution, Arts. 132 and 135.

Constitutional Law — Civil servants — Legal rights of.

Industrial relations — Public servants who are members of a trade union — Observations on — Industrial Relations Ordinance, 1960, s. 77.

Trade Union — Civil servants — Pursuit of trade union activities.

This was an application for an order of prohibition to prohibit the chairman of the committee of inquiry from proceeding with an inquiry which has been instituted at the instance of the Public Service Commission with a view to the dismissal of a public officer, who was an official of the appellant union. The main ground relied on was that section 77 of Industrial Relations Ordinance, 1960, would be contravened if the inquiry was held.

Held: (1) the institution of disciplinary proceedings against an officer in contemplation of his dismissal is not necessarily a threat to dismiss him; and even if it was such a threat, it could not be said to be a threat to dismiss him by reason of the circumstances that he was dissatisfied with working conditions under paragraph (d) or because he was a member of a trade union falling within paragraph (e) of section 77 of the Industrial Relations Ordinance as the charges preferred against the officer in this case fell outside the ambit of these paragraphs;

(2) it was doubtful, even if the committee of inquiry could be said to be exercising quasi-judicial functions, whether its decision could be said to affect any legal right which a civil servant may possess, because article 132 of the Federal Constitution provides that public officers hold office during the pleasure of the Yang di-Pertuan Agong or the Yang di-Pertuan Negara as the case may be.

Cases referred to:—

(1) *R.* v. *Electricity Commissioners* [1924] 1 K.B. 204.

(2) *R.* v. *MacFarlane* (1923), 32 C.L.R. 518.

(3) *Re Chua Ho Ann* [1963] M.L.J. 193.

(4) *Ex Parte Fry* [1954] 1 W.L.R. 730.

(5) *Allen* v. *Flood* [1898] A.C. 129.

(6) *R.* v. *Wyatt* (1921), 91 L.J.K.B. 403.

(7) *Wood* v. *Bowren* (1866), L.R. 2 Q.B. 21.

(8) *Terrell* v. *Secretary of State for the Colony* [1953] 2 Q.B. 482.

APPLICATION FOR PROHIBITION.

S. K. Lee for the applicants.

Tan Boon Teik (Solicitor-General) for the respondents.

Cur. Adv. Vult.

Winslow J.: On 21st May, 1965 I made an order on an *ex parte* application by the Amalgamated Union of Public Employees (hereinafter referred to as "the union") giving them liberty to move for an order of prohibition prohibiting the permanent secretary (health)/director of medical services, Singapore and the chairman of the committee of enquiry (hereinafter referred to as "the committee") appointed under regulation 4(3) of the Public Service (Disciplinary Proceedings) (Procedure) Rules, 1964, from proceeding with an enquiry which had been instituted at the instance of the Public Service Commission with a view to the dismissal of one Mr. Teo Hock Kin, a laboratory technician in the department of pathology, who was at the same time an official of the union.

The motion came for hearing before me on 1st July, 1965, and long and vigorous arguments were adduced by counsel on both sides, extending over a period of nearly three days.

During the argument it was conceded by counsel for the applicants that the permanent secretary (health)/director of medical services, the first named respondent, was *functus officio* and that no order of prohibition was required against him.

It therefore, remains for me to consider whether, on the grounds submitted, an order of prohibition should lie against the committee appointed by the Public Service Commission to enquire into Mr. Teo Hock Kin's alleged misconduct.

Before an order of *certiorari* or prohibition can issue the court must be satisfied that a body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, have acted or purport to act in excess of their legal authority. (See *R.* v. *Electricity Commissioners*,[1] *per* Atkin L.J.).

A considerable number of authorities dealing with the question of the exercise of judicial or quasi-judicial functions by persons and bodies of persons other than courts, *stricto sensu*, were cited by counsel on both sides. No stone seems to have been left unturned, in order to convince me, on the one hand, that the committee constituted in this case under the Public Service (Disciplinary Proceedings) (Procedure) Rules, 1964 is invested with functions of a quasi-judicial character and that, therefore, prohibition will lie to restrain it from holding the proposed enquiry into Mr. Teo Hock Kin's conduct on the ground that it has no jurisdiction so to act in contravention of a statute, to wit, the provisions of section 77 of the Industrial Relations Ordinance, 1960 (hereinafter referred to as "the Ordinance"). On the other hand the learned Solicitor-General points out that on the authority of *R.* v. *MacFarlane*[2] and *Re Chua Ho Ann*[3] and several others including *Ex parte Fry*,[4] prohibition will not lie as the committee will be performing a purely ministerial function as an adjunct of the executive.

When I granted leave to the applicants to move for an order of prohibition on 21st May last, I raised a few queries as to whether the union, as applicants, had any *locus standi* in the matter and also as to whether the committee would be acting quasi-judicially. Since these were matters which were open to argument I allowed the *ex parte* application particularly because the really important issue seemed to me to be whether section 77 of the Ordinance had been or was likely to be contravened by the steps taken towards the holding of the enquiry or by the actual holding thereof.

If, of course, either of the two previous prerequisites has not been satisfied, i.e., as to *locus standi* and the judicial character of the enquiry, then it would be unnecessary for me to make any finding on whether section 77 of the Ordinance has been contravened. But, as I have said earlier, this is a matter of some importance and I am sure that the Solicitor-General will be the last person to deny that, if it is likely to be contravened, some action should be taken to

ensure that the enquiry should not proceed.

But I am not so sure that the Government, as employer, can be said, by virtue of the institution of the present disciplinary proceedings with a view to Mr. Teo Hock Kin's dismissal, to be threatening to dismiss him within the meaning of section 77 of the Ordinance. That section reads (as to the matters relevant to this application) —

"77. (1) An employer shall not dismiss or threaten to dismiss an employee or injure or threaten to injure him in his employment or alter or threaten to alter his position to his prejudice, by reason of the circumstance that the employee —

(d) being a member of a trade union which is seeking to improve working conditions, is dissatisfied with such working conditions;

(e) is a member of a trade union which has served a notice under section 16 of this Ordinance or which is a party to negotiations under this Ordinance or to a trade dispute which has been notified to the registrar in accordance with Part III of this Ordinance".

A pre-requisite to the application of this section is that the threat to dismiss must arise by reason of the circumstance that the employee belongs to one of categories (d) or (e).

First, I do not think that the institution of disciplinary proceedings against an officer in contemplation of his dismissal is necessarily a threat to dismiss him. The officer, in this case, was informed on 26th March, 1965 that his dismissal was contemplated on the charges which were set forth and he was given seven working days to exculpate himself in writing.

This did not amount, in my view, to a threat to dismiss in the sense that it did not unequivocally express an intention to dismiss him. His dismissal was contemplated and not intended and the officer was given a chance to make an exculpatory statement.

In order to amount to a threat to dismiss there must be an expression of intention to dismiss or there must be communicated to the mind of the person to whom the threat is addressed some form of pressure or extreme pressure that unless he takes a particular course the threat will be carried into effect. (See *Allen* v. *Flood* [5] and *R.* v. *Wyatt* [6]). Further, as Lush J. said in *Wood* v. *Bowron*,[7] "it is the essence of a threat that it be made for the purpose of intimidating, or overcoming, the will of the person to whom it is addressed".

Secondly, I do not think that, even if it is such a threat, it amounts to a threat to dismiss him by reason of the circumstances that he is dissatisfied with working conditions under paragraph (d) or because he is a member of a trade union falling within paragraph (e). The disciplinary charges do not refer to either of these grounds but only to his action in issuing a circular containing allegedly disparaging remarks about his superior officer and in obtaining and publishing classified information without authority.

It seems to me that the charges preferred against Mr. Teo Hock Kin import considerations which fall outside the ambit of paragraphs (d) and (e) above. It may well be true that he is, in fact, a member of a union which was and is in the process of negotiating favourable terms and conditions of service for its members, and it may well be that Mr. Teo Hock Kin was and is, in fact, dissatisfied with his working conditions, but the disciplinary proceedings which have been instituted do not contemplate his dismissal because he is such a member or because he is so dissatisfied. The complaint against him is that he has made disparaging remarks about his superior officer and that he has obtained and published classified information without authority.

I am not here concerned with the merits of the case against him before the committee. It may well be that his explanation as to the circumstances in which he came to issue the circular in question may be accepted or, at the worst, a more lenient course may be taken as an alternative to dismissal. It may even well be that the case against him may be found to be non-proven.

It seems to me that this application has been motivated by a desire on the part of the union to vindicate the behaviour of one of its officials, that the union very probably feels that the disciplinary charges which have been preferred were actuated by some form of malice or bias against Mr. Teo Hock Kin and that the union has rallied to his side because it feels that perhaps he is being victimised for his union activities.

No actual allegation of malice, bias or victimisation has, however, been made by the applicants. They rely on a contravention of section 77 of the Ordinance.

My decision on this particular aspect of an essential requirement which must be proved before the court can issue an order of prohibition makes it unnecessary for me to deal with the other attractive questions which have arisen such as whether the committee, in circumstances like these, acts in a judicial or quasi-judicial manner or whether its determination can be said to affect the legal rights of a civil servant. I should have thought that, even if the committee can be said to be exercising quasi-judicial functions, it is still open to grave doubts whether its decision can be said to affect any legal right which a civil servant may possess because, as article 132 of the Federal Constitution provides, public officers like Mr. Teo Hock Kin only hold office during the pleasure of the Yang di-Pertuan

Agong or the Yang di-Pertuan Negara as the case may be. Furthermore they do not have any absolute right to pension and provision as to this is specifically made in the Pensions Ordinance, 1956. A reference to the case of *Terrell* v. *Secretary of State for the Colonies*,[8] makes this quite clear.

It is no doubt true that article 135 of the Federal Constitution confers certain rights on civil servants but these relate to matters such as the manner in which or by whom they may be dismissed. They do not confer any right to office or to pension or any right not to be dismissed.

It should be noted that an allegation of a contravention of section 77 of the Ordinance is a grave matter. Section 79 provides that no prosecution shall be instituted except by, or at the instance of, or with the written consent of, the State Advocate-General: I am, in fact, being asked to hold that an employer has contravened this section, i.e., that I am satisfied beyond reasonable doubt that an employer is guilty of an offence under section 77 of the Ordinance without a prosecution or a trial of any kind. This proposition has only to be stated to be rejected as not only being palpably absurd but contrary to all principles of justice and common sense.

It follows, therefore, that the applicants have failed to surmount the preliminary hurdle of satisfying this court that the committee is purporting to act in contravention of section 77 of the Ordinance.

Since the Yang di-Pertuan Negara, as an act of grace, has classified certain categories of public servants to be employees for the purposes of the Ordinance so as to enable them to enter into negotiations with the Government as their employer with regard to improving their terms and conditions of service, it seems to me that it would be, in all the circumstances of this particular case, an extension of this benevolence for the authoriteis concerned to relax the stringent view which they appear to have taken of Mr. Teo Hock Kin's conduct.

These proceedings have brought to light facts which were not available to the permanent secretary (health)/director of medical services and the Public Service Commission and it is unlikely that any more evidence than that presented in affidavit form before me will become available to the committee. In view of the serious allegation that section 77 of the Ordinance has been contravened, although I have held otherwise, the administration and its adjuncts may well deem it advisable to take a course which will dispel any likely recriminations on the part of either the union or Mr. Teo Hock Kin that he is being victimised, even though he is not. The union and persons like Mr. Teo Hock Kin (who are officials thereof and at the same time public officers) should, however, bear in mind that the pursuit of legitimate trade union activities on the part of civil servants does not give them any licence to disregard the general law of the land or their obligations as members of the public service to abide by such rules and regulations as govern their conduct.

Subject to these observations, the application is dismissed with costs.

Application dismissed.

TEO KOW CHYE & ANOR. v. PUBLIC PROSECUTOR

[A.Cr.J. (Wee Chong Jin C.J.) July 21, 1965]

[Singapore — Magistrate's Appeal No. 138 of 1965]

Criminal Procedure — Joint charge of two accused persons — Nullity — Criminal Procedure Code (Cap. 132), s. 169.

The appellants were jointly charged and convicted for acting as bookmakers an offence under section 5 of the Betting Ordinance, 1960. It appeared that the appellants were found in the premises each with his own schedule and documents relating to horse betting.

Held: the appellants should have been charged and tried separately as they clearly were not accused of the same offence or of different offences committed in the same transaction. The mere fact that they were in the same premises when carrying on their alleged unlawful activities was not sufficient to bring them within the provisions of section 169 of the Criminal Procedure Code.

MAGISTRATE'S CRIMINAL APPEAL.

S. K. Lee for the appellant.

Dalip Singh (Deputy Public Prosecutor) for the respondent.

Wee Chong Jin C.J.: The short point taken in this appeal is that the appellants were wrongly charged and tried together and that the joint trial was accordingly illegal and a nullity.

The facts were that a police party raided premises No. 269-B Outram Road on 5th July 1964 and arrested the appellants in the passageway of the premises. The first appellant had with him a schedule relating to horse betting and documents also relating to horse betting denoting bets valued at $1,570. The second appellant similarly had with him a schedule and documents valued at $2,570.

They were charged on one joint charge as follows:—

"You 1. Teo Kow Chye & Teo Chuan Teck
2. Lum Ngow

are charged that you, on or about the 5th day of July, 1964, at about 4.55 p.m. at No. 269-B Outram Road, Singapore, did act as 'Book-makers' and thereby committed an offence under section 5(3)(a) of the Betting Ordinance, Ordinance 30/60 and punishable under section 5(3) of the said Ordinance."